

§ 45.10 Documentation of margin matters.

A covered swap entity shall execute trading documentation with each counterparty that is either a swap entity or financial end user regarding credit support arrangements that:

(a) Provides the covered swap entity and its counterparty with the contractual right to collect and post initial margin and variation margin in such amounts, in such form, and under such circumstances as are required by this part; and

(b) Specifies:

(1) The methods, procedures, rules, and inputs for determining the value of each non-cleared swap or non-cleared security-based swap for purposes of calculating variation margin requirements; and

(2) The procedures by which any disputes concerning the valuation of non-cleared swaps or non-cleared security-based swaps, or the valuation of assets collected or posted as initial margin or variation margin, may be resolved; and

(c) Describes the methods, procedures, rules, and inputs used to calculate initial margin for non-cleared swaps and non-cleared security based swaps entered into between the covered swap entity and the counterparty.

§ 45.11 Special rules for affiliates.

(a) *Affiliates.* This part applies to a non-cleared swap or non-cleared security-based swap of a covered swap entity with its affiliate, unless the swap or security-based swap is excluded from coverage under § 45.1(d) or as otherwise provided in this section. To the extent of any inconsistency between this section and any other provision of this part, this section will apply.

(b) *Initial margin—(1) Posting of initial margin.* The requirement for a covered swap entity to post initial margin under § 45.3(b) does not apply with respect to any non-cleared swap or non-cleared security-based swap with a counterparty that is an affiliate. A covered swap entity shall calculate the amount of initial margin that would be required to be posted to an affiliate that is a financial end user with material swaps exposure pursuant to § 45.3(b) and provide documentation of such

amount to each affiliate on a daily basis.

(2) *Initial margin threshold amount.* For purposes of calculating the amount of initial margin to be collected from an affiliate counterparty in accordance with § 45.3(a) or calculating the amount of initial margin that would have been posted to an affiliate counterparty in accordance with paragraph (b)(1) of this section, the initial margin threshold amount is an aggregate credit exposure of \$20 million resulting from all non-cleared swaps and non-cleared security-based swaps between the covered swap entity and that affiliate. For purposes of this calculation, an entity shall not count a non-cleared swap or non-cleared security-based swap that is exempt pursuant to § 45.1(d).

(c) *Variation margin.* A covered swap entity shall collect and post variation margin with respect to a non-cleared swap or non-cleared security-based swap with any counterparty that is an affiliate as provided in § 45.4.

(d) *Custodian for non-cash collateral.* To the extent that a covered swap entity collects initial margin required by § 45.3(a) from an affiliate with respect to any non-cleared swap or non-cleared security-based swap in the form of collateral other than cash collateral, the custodian for such collateral may be the covered swap entity or an affiliate of the covered swap entity.

(e) *Model holding period and netting—*

(1) *Model holding period.* For any non-cleared swap or non-cleared security-based swap (or netting portfolio) between a covered swap entity and an affiliate that would be subject to the clearing requirements of section 2(h)(1)(A) of the Commodity Exchange Act of 1936 or section 3C(a)(1) of the Securities Exchange Act of 1934 but for an exemption under section 2(h)(7)(C)(iii) or (D) or section 4(c)(1) of the Commodity Exchange Act of 1936 or regulations of the Commodity Futures Trading Commission or section 3C(g)(4) of the Securities Exchange Act of 1934 or regulations of the U.S. Securities and Exchange Commission, the covered swap entity's initial margin model calculation as described in § 45.8(d)(1) may use a holding period equal to the shorter of five business days or the maturity of the non-cleared swap or non-cleared

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security-based swap (or netting portfolio).

(2) *Netting arrangements.* Any netting portfolio that contains any non-cleared swap or non-cleared security-based swap with a model holding period equal to the shorter of five business days or the maturity of the non-cleared swap or non-cleared security-based swap pursuant to paragraph (e)(1) of this section must be identified and separate from any other netting portfolio for purposes of calculating and complying with the initial margin requirements of this part.

(f) *Standardized amounts.* If a covered swap entity's initial margin model does not conform to the requirements of § 45.8, the covered swap entity shall calculate the amount of initial margin required to be collected for one or more

non-cleared swaps or non-cleared security-based swaps with a given affiliate counterparty pursuant to section § 45.3 on a daily basis pursuant to appendix A with the gross initial margin multiplied by 0.7.

§ 45.12 Capital.

A covered swap entity shall comply with:

(a) In the case of a covered swap entity that is a national bank or Federal savings association, the minimum capital requirements as generally provided 12 CFR part 3.

(b) In the case of a covered swap entity that is a Federal branch or agency of a foreign bank, the capital adequacy guidelines applicable as generally provided under 12 CFR 28.14.

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APPENDIX A TO PART 45—STANDARDIZED MINIMUM INITIAL MARGIN REQUIREMENTS FOR NON-CLEARED SWAPS AND NON-CLEARED SECURITY-BASED SWAPS

TABLE A—STANDARDIZED MINIMUM GROSS INITIAL MARGIN REQUIREMENTS FOR NON-CLEARED SWAPS AND NON-CLEARED SECURITY-BASED SWAPS¹

Asset Class	Gross initial margin (% of notional exposure)
Credit: 0–2 year duration	2
Credit: 2–5 year duration	5
Credit: 5+ year duration	10
Commodity	15
Equity	15
Foreign Exchange/Currency	6
Cross Currency Swaps: 0–2 year duration	1
Cross-Currency Swaps: 2–5 year duration	2
Cross-Currency Swaps: 5+ year duration	4
Interest Rate: 0–2 year duration	1
Interest Rate: 2–5 year duration	2
Interest Rate: 5+ year duration	4
Other	15

¹ The initial margin amount applicable to multiple non-cleared swaps or non-cleared security-based swaps subject to an eligible master netting agreement that is calculated according to Appendix A will be computed as follows:

Initial Margin = 0.4 × Gross Initial Margin + 0.6 × NGR × Gross Initial Margin

where;

Gross Initial Margin = the sum of the product of each non-cleared swap's or non-cleared security-based swap's effective notional amount and the gross initial margin requirement for all non-cleared swaps and non-cleared security-based swaps subject to the eligible master netting agreement;

and

NGR = the net-to-gross ratio (that is, the ratio of the net current replacement cost to the gross current replacement cost). In calculating NGR, the gross current replacement cost equals the sum of the replacement cost for each non-cleared swap and non-cleared security-based swap subject to the eligible master netting agreement for which the cost is positive. The net current replacement cost equals the total replacement cost for all non-cleared swaps and non-cleared security-based swaps subject to the eligible master netting agreement. In cases where the gross replacement cost is zero, the NGR should be set to 1.0.